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DEERE & COMPANY ONE JOHN DEERE PLACE MOLINE, IL 61265			EXAMINER FABIAN-KOVACS, ARPAD	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NORBERT WOLTERS and RICHARD WÜBBELS

Appeal 2009-003045
Application 09/727,134
Technology Center 3600

Before LINDA E. HORNER, WILLIAM F. PATE, III, and JENNIFER D.
BAHR, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Norbert Wolters and Richard Wübbels (Appellants) appeal under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 1-7 and 20-24 under 35 U.S.C. § 103(a) as being unpatentable over Wiegert (WO 99/03323, pub. Jan. 28, 1999), Thompson (US 2,777,267, iss. Jan. 15, 1957), and Leposa² (GB 2012154 A, pub. Jul. 25, 1979).³ The Examiner has indicated that claims 8-13, 15, and 17-19 are allowable. No other claims are pending in the application. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellants' claimed invention is directed to an agricultural crop feeding and picking device having a feeding element with a vertical axis of rotation. Spec. 1:6-7. Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A feeding and picking device for feeding and picking a standing agricultural crop wherein individual plants in the crop are provided with plant stalks, the feeding and picking device

² The Examiner and Appellants refer to this publication in the Answer and Appeal Brief as "Pottinger."

³ This appeal is the second appeal to the Board in this application. In a prior decision dated February 11, 2005 (Appeal 2005-0352), a panel of this Board reversed a rejection of claims 1-4, 20, and 21 under 35 U.S.C. § 102(b), and summarily sustained a rejection of claims 5-7 under 35 U.S.C. § 103(a) as being unpatentable over Wiegert, Thompson, and Leposa (on the basis that Appellants failed to point out how the claimed subject matter distinguishes from the device of Wiegert modified as proposed by the Examiner). *Ex parte Wolters*, No. 2005-0352, at 3-5 (BPAI Feb. 11, 2005), <http://des.uspto.gov/Foia/RetrievePdf?system=BPAI&fNm=fd050352>. Independent claims 1, 2, and 20 have been amended subsequent to that decision.

comprising a picking device and a rotating feeding element that is rotated in a circle about a vertical axis and comprises a body with outwardly extending fingers, the rotating feeding element grasps plant stalks and directs the plant stalks to the picking device which separates useable parts from plant stalks, the picking device having an effective length, wherein [the] rotating feeding element is designed to transport the plant throughout the effective length of the picking device and further wherein the picking device is provided with an inlet, the inlet being located in front of the vertical axis of the feeding element.

SUMMARY OF DECISION

We REVERSE.

OPINION

An issue in this appeal is whether the combined teachings of Wiegert, Thompson, and Leposa render obvious a feeding and picking apparatus as called for in claims 1, 2, and 20, wherein the feeding element is designed to transport the plant throughout the effective length of the picking device (as required in claims 1 and 20) or to support the plant stalk while it is being processed by the picking device (as required in claim 2), and further wherein the picking device inlet is located in front of the vertical axis of the feeding element (as required in each of independent claims 1, 2, and 20). *See* App. Br. 19-23; Reply Br. 4-5.

Presumably to make up for the deficiency in Wiegert pointed out in the decision of the Board in *Wolters*, at 4 (i.e., that neither the chopping unit 21 nor the feed chains 18, 19 grasp the plant stalks), the Examiner concluded that it would have been obvious to substitute either the feeder unit 31, with shaft 32 and fingers 37, of Thompson or the feeding unit of Leposa (pick-up

wheels 2 with bent tines 10) for the feeding chain arrangement of Wiegert. Ans. 5-6. In addressing the limitations in claims 1, 2, and 20 that the feeding element is designed to transport the plant throughout the effective length of the picking device (or to support the plant stalk while it is being processed by the picking device) and that the picking device inlet is located in front of the vertical axis of the feeding element, the Examiner reasoned that “the vertical axis of the combination’s feeding element is where the chain (18, 19) mid point is located” and that, consequently, “the inlet of the picking device is located in front of the vertical axis of the feeding element.” Ans. 9.

The particular positioning proposed by the Examiner for the rotating shafts of the feeding unit of either Thompson or Leposa in the apparatus of Wiegert (i.e., with the rotating shafts located at the mid point of the run of the chains 18, 19) is not supported by the applied references. Specifically, as clearly illustrated in figures 1 and 2 of Thompson and figures 2 and 4 of Leposa⁴, the feeding units of Thompson and Leposa are positioned upstream of the processing unit to which they feed (shredding mechanism of Thompson or infeed means of maize chopper (or conveying means of pick-up apparatus or infeed means of maize chopper) of Leposa), such that they feed stalks up to, but not through, the subsequent processing unit, and such that the vertical axes of rotation of the feeding units are upstream (in front) of the inlet to the subsequent processing unit. Absent hindsight gleaned from Appellants’ disclosure, it is not apparent why a person of ordinary skill

⁴ See Leposa, p. 4, ll. 24-26 and 44-50 describing the guide means 3, 4 extending “up to the immediate range of the infeed means of the maize chopper” (fig. 2) or ending “in the immediate range of the pick-up drums 37, 37’ of the conveying means of the pick-up apparatus or the infeed means of the maize chopper” (fig. 4).

in the art would position such feeding units differently (i.e., with the vertical axes of rotation of the feeding units downstream of the picking device inlet) if incorporated into the apparatus of Wiegert.

For the above reasons, we conclude that the combined teachings of Wiegert, Thompson, and Leposa do not render obvious a feeding and picking apparatus as called for in claims 1, 2, and 20, wherein the feeding element is designed to transport the plant throughout the effective length of the picking device (as required in claims 1 and 20) or to support the plant stalk while it is being processed by the picking device (as required in claim 2), and further wherein the picking device inlet is located in front of the vertical axis of the feeding element (as required in each of independent claims 1, 2, and 20).

DECISION

The Examiner's decision is reversed.

REVERSED

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DEERE & COMPANY
ONE JOHN DEERE PLACE
MOLINE, IL 61265